

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
Tel. 022 22163964/65/69, Fax 22163976
Email: mercindia@merc.gov.in
Website: www.merc.gov.in

Case No. 50 of 2016

Suo Motu Hearing as per Hon'ble ATE's Judgment dated 24 July, 2020 in Appeal No. 260 of 2016 in the matter of Commission's Order dated 5 July, 2016 in Case No. 50 of 2016 for approval of capital cost as on Commercial Operation Date of the Project, and True-up of ARR from FY 2013-14 to FY 2015-16 and determination of ARR for FY 2016-17 to FY 2019-20

Coram

**I.M. Bohari, Member
Mukesh Khullar, Member**

Maharashtra Eastern Grid Power Transmission Co. Ltd. Petitioner

V/s

State Transmission Utility (STU)Impleaded Respondent

Appearance

For the Petitioner:

Adv. Ms. Deepa Chawan

For the Respondent:

Shri Shashank Jewalikar, CE, STU

ORDER

Date: 18 October, 2020

1. Maharashtra Eastern Grid Power Transmission Co. Ltd. (**MEGPTCL**) had filed a Petition on 9 March, 2016 in Case No. 50 of 2016 for Truing up of Aggregate Revenue Requirement (**ARR**) for FY 2013-14 and FY 2014-15, Provisional Truing up of ARR for FY 2015-16 and, approval of ARR for the 3rd Multi Year Tariff (**MYT**) Control Period from FY 2016-17 to FY 2019-20.

2. The Commission vide its Order dated 5 July, 2016 in Case No. 50 of 2016 disallowed a part of the ARR of MEGPTCL on account of the following issues:
 - i. Commercial Operation Date (**COD**) was approved as 20 May, 2015 as recommended by State Transmission Utility (**STU**) instead of 31 March, 2015 claimed by MEGPTCL for the third set of Transmission Assets of MEGPTCL for ARR recovery.
 - ii. Disallowance of Foreign Exchange Rate Variation (**FERV**) on Material Import and Price Variation.
 - iii. Disallowance of various capital cost components.
 - iv. Considering outstanding Delayed Payment Charges (**DPC**) as Non-Tariff Income (**NTI**) for reduction of allowed ARR.
 - v. Non-allowance of actual Operation & Maintenance (**O&M**) expenses.
 - vi. Approval of lesser Interest on Long-Term Loan.
 - vii. Income from Interest and profit from sale of investment considered as NTI.
 - viii. Holding cost of interest on contingency reserve reduced from approved ARR.
3. Aggrieved by the Commission's Order dated 5 July, 2016 in Case No. 50 of 2016 (**Impugned Order**), MEGPTCL had filed the Appeal No. 260 of 2016 before the Hon'ble Appellate Tribunal for Electricity (**ATE**).
4. The Hon'ble ATE vide its Judgment dated 24 July, 2020 in Appeal No. 260 of 2016 has set aside the Impugned Order and remanded the matter to the Commission to pass the consequential Order within 3 months. The rulings of the Hon'ble ATE vide its Judgment dated 24 July, 2020 are summarised as under:

4.1 **Issue No. 1:-** Disallowance of Commercial Operation Date (COD), as proposed by the Appellant, of the third set of Transmission Lines and commencement of Revenue:

ATE Rulings:

"It is decided that COD of Third set of Transmission Assets shall be 31.03.2015 and the Appellant shall be entitled to tariff from 31.03.2015 onwards as per MYT Regulations, 2011 (2.1 (29) read with Regulation 12 & 13)."

4.2 **Issue No.2:-** Disallowance of Foreign Exchange Rate Variation on Material Import and Price Variation

ATE Rulings:

“It is decided to allow FERV on the material import as well as variation of prices of raw materials during the period of delay considering that the delay is not attributable to the Appellant.”

4.3 Issue No.3:- Disallowance of Various capital components

ATE’s Rulings:

i) Additional bays at Akola -II sub-station and additional towers for charging: These additional bays and additional towers are not only out of scope of work but also not in use and are spare assets. Therefore, cost of these assets cannot be passed on to the consumers and hence the claims of the Appellant on account of additional bays and additional towers are rejected.

ii) Claim for damaged items, demurrage charges and idling charges:

We find substance in findings of the State Commission on these issues and decide to reject these claims of the Appellant in the overall interest of consumers.

iii) Interest During Construction: The State Commission has already approved provisional IDC which is required to be finalised considering the contentions raised by the Appellant.

4.4 Issue No.4:-Treatment of DPC as Non-Tariff Income (NTI):

ATE Rulings:

“In light of the judgment of this Tribunal dated 29.05.2019 in Appeal No. 250 of 2016, DPC cannot be considered as non-tariff income.”

4.5 Issue No.5:- Non-allowance of actual O&M Cost:

ATE Rulings:

“This Tribunal had considered similar contentions raised by Adani Transmission (India) Ltd. and MERC in regard to actual O&M cost in Appeal NO. 250 of 2016 and decided in the judgment dated 29.05.2019. In light of the above judgment, this issue is decided against the Appellant.”

4.6 Issue No.6:- Approval of less interest on long-term loan:

ATE Rulings:

“We do not find any reason to intervene on this issue decided by the State Commission. However, the issue may be taken up by the Appellant with the Commission during

next tariff proceedings for clarity on computation of interest and correction of error, if any.”

- 4.7 **Issue No.7:-** Income from interest and profit from sale of investment considered as Non-Tariff Income:

ATE Rulings:

“We decide to remand this issue to the State Commission to reconsider as per the appropriate regulation after seeking necessary details and justification from the Appellant.”

- 4.8 **Issue No.8:-** Holding cost of Interest on contingency reserves:

ATE Rulings:

“We do not find any infirmity in the decision of the State Commission on this issue. However, holding cost shall be applicable only on the amount that was recovered from the consumers and not invested as contribution to contingency reserves.”

- 4.9 The final summary of the rulings of the Hon’ble ATE is as under:

“ORDER

In the light of the above, we are of the considered view that some of the issues raised in the Appeal No. 260 of 2016 have merits and hence the appeal is partly allowed. The impugned order dated 05.07.2016 passed by Maharashtra Electricity Regulatory Commission in Case No. 50 of 2016 is hereby set aside to the extent of our findings under Para 12.1 to 12.8, stated supra.

The matter stands remitted back to the State Commission with a direction to pass consequential orders as expeditiously as possible within a period of three months from the date of pronouncement of this judgment /order.—”

5. MEGPTCL, vide its letter dated 28 July, 2020 has requested the Commission to issue the consequential Order as per the Hon’ble ATE’s Judgment dated 24 July, 2020 in Appeal No. 260 of 2016.
6. As per the directives of the Hon’ble ATE, the Commission needs to dispose of the Case within a three-month period from 24 July, 2020, i.e., on or before 23 October, 2020. Hence, the Commission suo-motu issued the notices to the Parties on 13 August 2020 and 14 September, 2020 and scheduled the E-hearing on 9 October, 2020. Also, the State Transmission Utility (STU) was impleaded as Respondent to the Case and asked to submit the replies, if any, vide notice dated 13 August 2020.
7. **The Respondent STU’s submission dated 15 September, 2020 is as under:**

7.1. STU had filed the Petition before the Commission in Case No. 327 of 2020 as per the provisions of Regulation 64.5 of the MYT Regulations, 2019 for determination of the share of Total Transmission System Cost (**TTSC**) to be recovered from the various TSUs.

7.2. The Commission vide its Order dated 30 March, 2020 in Case No. 327 of 2020 has approved the ARR of MEGPTCL in Rs. Crore, as under:

FY 20-21		FY 21-22		FY 22-23		FY 23-24		FY24-25	
Annual	Monthly	Annual	Monthly	Annual	Monthly	Annual	Monthly	Annual	Monthly
973.33	81.11	946.91	78.91	914.17	76.18	881.59	73.47	849.18	70.76

7.3. Further, STU has to file Mid-Term Review (**MTR**) Petition by 30 November, 2022, in accordance with Regulation 64.5 of the MYT Regulations, 2019 for determination of share of TTSC to be recovered from Transmission System Users (TSUs) in the State.

7.4. STU in its MTR Petition will consider the ARR of MEGPTCL as approved by the Commission as part of MTR Petition for recovery through InSTS Order.

8. The E-hearing was held on 9 October, 2020. At the E-hearing:

8.1 The Advocate of MEGPTCL objected to the submission of STU wherein STU has submitted that it will file the MTR Petition as per the provisions of Regulation 64.5 of the MYT Regulations, 2019 and consider the ARR of MEGPTCL for recovery as approved by the Commission.

8.2 The Advocate of MEGPTCL stated that MYT Regulations, 2019 cannot be applied retrospectively. The present matter is for determination of Capital Cost as on COD of the project, i.e., 31 March, 2015 and True-up of ARR for FY 2013-14, FY 2014-15, Provisional True-Up of ARR for FY 2015-16 and determination of ARR for the Control Period from FY 2016-17 to 2019-20 as per the Commission's Order dated 5 July, 2016. The submissions of STU relying on Regulation 64.5 of the MYT Regulations, 2019 cannot be admitted on the following legal grounds:

- a) The MYT Regulations, 2019 cannot be applied retrospectively.
- b) The provision of Section 62 (4) of the Electricity Act (EA), 2003 cannot be ignored and all Regulations will have to be interpreted in consonance with Section 62 (4) of the EA, 2003.
- c) The ambit of the present proceedings is to give effect to and to implement the Judgment and Order of the Hon'ble ATE dated 24 July, 2020 in Appeal No. 260 of 2016. The ambit cannot now be enhanced nor delayed.

8.3 The Advocate of MEGPTCL referred to the following Judgments of the Hon'ble Supreme Court and Hon'ble ATE in support of his arguments:

- i. The Hon'ble Supreme Court Judgment in *Mahabir Vegetables Oils (P) Ltd. Vs. State of Haryana & Ors – 2006 3 SCC 620*
- ii. The Hon'ble Supreme Court Judgment in *State of Rajasthan v. Basant Agrotech (India) Ltd., (2013) 15 SCC 1*
- iii. The Hon'ble Supreme Court Judgment in *Union of India Vs. Hansoli Devi, (2002) 7 SCC 273*
- iv. Hon'ble ATE Judgment dated 5 October, 2020 in Appeal No. 97 of 2020 *Karnataka Power Transmission Corporation Limited Vs. Karnataka Electricity Regulatory Commission.*

8.4 The representative of STU reiterated their submission dated 15 September, 2020.

8.5 The Commission pronounced that STU may file its short reply, if any, on the arguments of MEGPTCL at the hearing. STU has not filed any further response to the arguments of MEGPTCL advanced during the hearing.

Commission's Analysis and Rulings:

9. the Hon'ble ATE vide its Judgment dated 24 July, 2020 has set aside the Impugned Order and directed the Commission to pass the consequential orders as expeditiously as possible within a period of three months from the date of pronouncement of the Judgment, i.e., by 23 October, 2020. The Hon'ble ATE has partly allowed the Appeal No. 260 of 2016 of MEGPTCL.
10. In accordance with the rulings of the Hon'ble ATE vide its Judgment dated 24 July, 2020 in Appeal No. 260 of 2016, the Commission has to consider the following crucial aspects before passing the consequential Orders:
11. The Hon'ble ATE has decided the following issues in favour of MEGPTCL:
 - i. **Issue No. 1:** Commercial Operation Date (COD) for third set of transmission asset to be considered as 31 March, 2015;
 - ii. **Issue No. 2:** FERV allowed on material import and price variation;
 - iii. **Issue No. 3 (iii):**- IDC to be considered as per revised COD;
 - iv. **Issue No. 4:-** DPC not to be considered as Non-Tariff Income.
12. Further, Issues No. 6 and 7, as detailed out below, need to be decided by the Commission based on the submission of necessary details/justification made by MEGPTCL during the next tariff proceedings:

- i. **Issue No. 6** (Approval of less interest on long-term loan): The Hon’ble ATE has ruled that MEGPTCL should take up this issue with the Commission during next tariff proceedings for clarity on computation of interest and correction of error, if any;
 - ii. **Issue No. 7** (Income from interest and profit from sale of investment considered as Non-Tariff Income): The Hon’ble ATE has ruled that the issue needs to be decided based on the necessary details and justification submitted by MEGPTCL.
13. The Commission notes that to give effect to the Hon’ble ATE Judgment in terms of the Impugned Order involves:
 - i. Re-determination of ARR as per the prevalent MYT Regulations on account of the issues decided in favour of MEGPTCL, with effect from FY 2013-14 till date. The Commission has to reassess the various components of the ARR such as Interest on Loan, Depreciation, Interest on Working Capital (IoWC), Return on Equity (RoE), Income Tax, Availability Incentive, Sharing of Losses and Gains, Carrying Cost, etc. Hence, a major part of the ARR of MEGPTCL has to be re-computed from FY 2013-14 onwards till date, to allow the recovery of cumulative Revenue Gap.
 - ii. Actual recovery of the re-determined ARR through the InSTS Tariff Order.
14. It is worthwhile to note that as per the Transmission Pricing framework and MYT Regulations, InSTS Tariff is derived by pooling the approved ARR of all the Transmission Licensees in terms of Total Transmission System Cost (TTSC). The TTSC is shared by the various TSUs as per their proportionate use of InSTS in terms of the average of Coincident Peak Demand (CPD) and Non-Coincident Peak Demand (NCPD).
15. It is a settled principle that the Tariff of Electricity including Transmission Tariff needs to be determined as per the provisions of the EA, 2003 and the Tariff Regulations framed thereunder. Accordingly, the Commission has notified the MYT Regulations applicable to the respective period in accordance with Section 61 of the EA, 2003. Section 62 of the EA, 2003 provides that the Commission may require a Licensee or a Generating Company to furnish separate details, as may be specified for determination of tariff. Further, Section 62 of the EA, 2003 provides as under:

“Section 62. (Determination of tariff): --- (1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –

 - (a) supply of electricity by a generating company to a distribution licensee: ...*
 - (b) transmission of electricity;*
 - (c) wheeling of electricity;*
 - (d) retail sale of electricity: ...*

(2) The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff....

(4) No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.

(5) The Commission may require a licensee or a generating company to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.” (Emphasis added)

16. The MYT Regulations, 2019 specify that the Petitioner shall submit separate audited Accounting Statements along with the Petition for determination of Tariff or Fees and Charges including Excel sheets, carrying cost, impact on ARR, etc. (similar provisions existed in the MYT Regulations, 2011 and MYT Regulations, 2015). The Petition shall include information in such form as may be stipulated by the Commission, together with the Accounting Statements, extracts of books of account and such other details, including Cost Accounting Reports or extracts thereof, as it may require to assess the ARR.

17. Further, the Hon’ble ATE in its Judgment dated 30 May, 2014 in Appeal No. 227 of 2012 (MSEDCL v/s MERC and others) has ruled on the importance of prudence check, as under:

“iii) Disallowance of interest on income tax:

The claim of the Appellant regarding interest on income tax assessed by the Income tax authorities due to mistake in self assessment of income tax by the Appellant due to not following the Accounting Standards is rejected as the imprudent expenditure cannot be allowed by the State Commission.” (Emphasis added)

18. The Hon’ble ATE Judgment will result in additional financial recoveries on TSUs and their consumers on account of the increase in the ARR of MEGPTCL. Hence, based on the observations of the Hon’ble ATE, the Commission needs to allow the additional recovery after carrying out the prudence check of the amount to be passed on to the consumers as per the prevalent MYT Regulations. The applicability of the various MYT Regulations for re-determination of ARR for the period envisaged in the Impugned Order is as under:

Sr. No.	Period for re-determination of ARR	Applicable MYT Regulations
1	FY 2013-14 to FY 2015-16	MYT Regulations, 2011
2	FY 2016-17 to FY 2019-20	MYT Regulations, 2015
3	FY 2020-21 to FY 2024-25	MYT Regulations, 2019

19. Hence, in accordance with the Hon'ble ATE Judgment, the ARR needs to be re-determined retrospectively as per the applicable MYT Regulations for the respective period on account of the issues decided in favour of MEGPTCL. To do so, the Commission must have the technical as well as financial data and necessary documents for prudence check as defined under the EA, 2003 and the applicable MYT Regulations.
20. MEGPTCL, vide its letter dated 28 July, 2020 has requested the Commission to issue the consequential Order as per the Hon'ble ATE's Judgment dated 24 July, 2020 in Appeal No. 260 of 2016. MEGPTCL has not submitted the requisite technical and financial details to assess the revised ARR. The Commission would need this data to reassess the ARR and allow the recovery of the same.
21. Hence, the Commission deems it fit and proper to direct MEGPTCL to submit the necessary documents such as Excel sheets, accounting statements, computations of revised components of the ARR including Carrying Cost, etc., as envisaged in the applicable MYT Regulations, EA, 2003 and the Hon'ble ATE Judgment, by 10 November, 2020. Also, MEGPTCL shall serve the copies of the documents on the STU and all Distribution Licensees in the State of Maharashtra who are sharing the TTSC, being TSUs. The STU's and the DL's shall submit their reply (in any within 15 days thereafter).
22. After submission of the documents and necessary information by MEGPTCL, the Commission will analyse it and conduct the hearing giving opportunity to the affected Parties to have their say. After hearing the Parties, the Commission shall issue the Order determining the revised ARR and its recovery.
23. It is clear that the ARR for different periods is to be determined as per the MYT Regulations applicable for that period. Also, the Hon'ble ATE in its Judgment has specially ruled that MEGPTCL shall be entitled to tariff from 31 March, 2015 onwards as per MYT Regulations, 2011. There was never any doubt about applicability of the existing Regulations for respective periods. MEGPTCL has wrongly presumed that MYT Regulations, 2019 will be made applicable retrospectively. This argument was based on the MEGPTCL's understanding of the submission by STU as per Regulation 64.5 of the MYT Regulations, 2019.
24. The case laws cited by MEGPTCL at the hearing are relating to retrospective/ prospective applicability of the subordinate legislations. Also, these case laws clarify that if the words of the statute are in themselves precise and unambiguous, then no more interpretation is required. In the present matter, the provisions of the EA, 2003 and the MYT Regulations are clear and Commission has to determine the ARR as per the applicable MYT Regulations based on the information and documents submitted by MEGPTCL. Also, the Commission will give effect to the Hon'ble ATE Judgment including the applicable carrying/holding cost as the case may be in accordance with the applicable MYT Regulations in the respective periods. Hence, the case laws cited by MEGPTCL are not applicable to the present case.


25. In any case, as ruled by the Hon'ble ATE, to decide the Issue No. 6 and 7, MEGPTCL need to submit the necessary justification and information to the Commission during the next tariff proceedings.
26. In view of the foregoing, the Commission will issue the Order re-determining the ARR and its recovery in accordance with the Hon'ble ATE Judgment dated 24 July, 2020 in Appeal No. 260 of 2016 to the extent of issues decided in favour of MEGPTCL, after the necessary information and data complete in all respects is submitted by MEGPTCL.
27. Accordingly, the Commission hereby passes the consequential Order in compliance to the Hon'ble ATE Judgment dated 24 July, 2020 in Appeal No. 260 of 2016.
28. Hence, the following Order.

ORDER

- 1) **The Commission directs Maharashtra Eastern Grid Transmission Co. Ltd. to submit the necessary documents and information as envisaged in the MYT Regulations, EA, 2003 and the Hon'ble ATE Judgment dated 24 July, 2020 in Appeal No. 260 of 2016, to the extent of issues decided in favour of MEGPTCL.**
- 2) **After submission of the documents and necessary information by Maharashtra Eastern Grid Transmission Co. Ltd. , the Commission will analyse it and conduct the hearing giving opportunity to the affected Parties to have their say. After hearing the Parties, the Commission shall issue the Order determining the revised ARR and its recovery.**
- 3) **The Secretariat of the Commission shall list the case as expeditiously as possible after the petition with all the requisite information/documents is duly filed by MEGPTCL.**

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member


(Abhijit Deshpande)
Secretary

